

AO 120 (Rev. 2/99)

TO: Mail Stop 8 Director of the U.S. Patent & Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	<div style="position: relative; height: 100px;"> <div style="position: absolute; top: 0; left: 0; right: 0; bottom: 0; background: linear-gradient(to top right, transparent 49%, black 49%, black 51%, transparent 51%); background-size: 200% 200%;"></div> <div style="position: absolute; top: 50%; left: 50%; transform: translate(-50%, -50%); font-weight: bold; font-size: 1.2em;"> SOLICITOR MAY 19 2009 U.S. PATENT & TRADEMARK OFFICE </div> </div>
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**REPORT ON THE
FILING OR DETERMINATION OF AN
ACTION REGARDING A PATENT OR
TRADEMARK**

In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court Northern District of California on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. C-09-2074-EDL	DATE FILED May 12, 2009	U.S. DISTRICT COURT Office of the Clerk, 450 Golden Gate Ave., 16th Floor, San Francisco, CA 94102
PLAINTIFF MOUNT HAMILTON PARTNERS, LLC		DEFENDANT OPENTABLE, INC.

PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 6,741,969 B2		
2		"Pls. See Attached Copy of Complaint"
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY
	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading

PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK Richard W. Wieking	(BY) DEPUTY CLERK Thelma Nudo	DATE May 12, 2009
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Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to Commissioner
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

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16 Attorneys for Plaintiff
17 Mount Hamilton Partners, LLC

18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA

20 MOUNT HAMILTON PARTNERS, LLC

21 Plaintiff,

22 vs.

23 OPENTABLE, INC.,

24 Defendant.

ORIGINAL FILED

MAY 12 2009

Richard W. Wisking
Clark, U.S. District Court
Northern District of California
San Jose

FILED BY: FCA

Case No. 09 02074 EDL

COMPLAINT FOR PATENT
INFRINGEMENT

DEMAND FOR JURY TRIAL

1 Plaintiff Mount Hamilton Partners, LLC ("Mount Hamilton") files this Complaint
2 for Patent Infringement against Defendant OpenTable, Inc. ("OpenTable") and alleges as
3 follows:

4 **PARTIES**

5 1. Plaintiff Mount Hamilton is a limited liability company organized and
6 existing under the laws of the state of Delaware with its principal place of business at 650
7 Castro Street, Suite 220, Mountain View, CA 94041.

8 2. Upon information and belief, Defendant OpenTable is a corporation
9 organized and existing under the laws of the state of Delaware with its principal place of
10 business at 799 Market Street, 4th Floor, San Francisco, CA 94103.

11 **JURISDICTION**

12 3. This is an action for patent infringement under the Patent Laws of the United
13 States, 35 U.S.C. § 1, *et seq.*

14 4. This Court has subject matter jurisdiction over this case for patent
15 infringement pursuant to 28 U.S.C. §§ 1331 and 1338(a).

16 5. This Court has personal jurisdiction over OpenTable because it maintains its
17 principle place of business in this judicial district.

18 **VENUE**

19 6. Venue for this action is proper in this district pursuant to 28 U.S.C. §§
20 1391(b), 1391(c) and 1400(b) because OpenTable resides in this district and the infringing
21 activities took place, at least in part, in this district.

22 **INTRA-DISTRICT ASSIGNMENT**

23 7. This complaint sets forth an action for patent infringement which is an
24 excepted category under Civil L.R. 3-2(c). In this particular case, on information and
25 belief, defendant OpenTable has its principal place of business in San Francisco County.
26 Plaintiff resides in Santa Clara County. Pursuant to Civil L.R. 3-2(c), this action is
27 assigned on a district-wide basis.
28

1 FACTS

2 8. On May 25, 2004, the United States Patent and Trademark Office duly and
3 legally issued United States Patent No. 6,741,969 B1 ("the '969 Patent"), entitled
4 "SYSTEM AND METHOD FOR REDUCING EXCESS CAPACITY FOR
5 RESTAURANTS AND OTHER INDUSTRIES DURING OFF-PEAK OR OTHER
6 TIMES." A copy of the '969 Patent is attached hereto as Exhibit A.

7 9. Mount Hamilton is the owner of all right, title and interest in and to the '969
8 Patent, and has the right to sue and recover damages for infringement thereof.

9 10. The '969 Patent is a pioneering patent. The '969 Patent provides an
10 innovative solution that simultaneously addresses several problems facing restaurants and
11 other industries. These problems include, without limitation, the challenges of (a) reducing
12 excess capacity during off-peak hours because unused seats translate to lost sales for a
13 restaurant; (b) restaurants not having detailed information about their customers making it
14 difficult to effectively market to customers and generate repeat business and customer
15 loyalty; and (c) the difficulty consumers face in trying to search for desirable restaurants at
16 which to eat and determining in real-time as they search whether a reservation is actually
17 available at the time they desire to dine.

18 11. The '969 Patent relates, in part, to providing a unique combination of
19 features to address these and other problems. One aspect of the '969 Patent relates to
20 providing a website that includes: a web-based interactive restaurant search guide with a
21 real-time reservation module that links to restaurant reservations systems, requires users to
22 register and create a profile to enable customer information to be gathered so it can be used
23 for marketing, customer loyalty and other purposes, and offers rewards to diners who elect
24 to make reservations at specified time periods which may correspond to times when
25 different restaurants may have excess capacity.

26 12. OpenTable makes, uses, sells and offers to sell products and/or services for
27 taking restaurant reservations comprising an online network connecting reservation-taking
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1 restaurants and people who dine at those restaurants. It sells and offers to sell an electronic
2 reservation system for restaurant customers and provides a restaurant reservation website
3 for diners at <http://www.opentable.com> (the "OpenTable Website") for the placement of
4 restaurant reservations throughout the United States, including California. A copy of the
5 front page of the OpenTable Website is attached as Exhibit B.

6 13. The OpenTable Website includes: a web-based interactive restaurant search
7 guide with a real-time reservation module that links to restaurant reservations systems, and
8 which requires users to register and create a profile to enable customer information to be
9 gathered so it can be used for marketing, customer loyalty and other purposes, and which
10 offers rewards to diners who elect to make reservations at specified time periods which may
11 correspond to times when different restaurants may have excess capacity.

12 14. OpenTable's electronic reservation system and the OpenTable Website
13 include the issuance of "Dining Points," which can be accumulated and redeemed for
14 "Dining Cheques." The standard award is 100 points per reservation, but diners can earn
15 1,000 points for reservations during specific times, which may differ from restaurant to
16 restaurant. Dining Cheques can be redeemed at participating restaurants. A copy of a page
17 of the OpenTable Website associated with the Dining Rewards program is attached as
18 Exhibit C.

19 **COUNT 1 – PATENT INFRINGEMENT**

20 15. The allegations of Paragraphs 1-14 are repeated and incorporated herein by
21 reference, as though fully set forth herein.

22 16. OpenTable has infringed, contributorily infringed, and/or induced
23 infringement of one or more claims of the '969 Patent in violation of the patent laws of the
24 United States, including one or more of 35 U.S.C., §§ 271(a), (b), and (c), by making,
25 having made, using, selling, offering to sell, and/or importing in or into the United States,
26 including this judicial district, without authority, products and services that infringe one or
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1 more claims of the '969 Patent, including without limitation the products and/or services set
2 forth above.

3 17. Upon information and belief, after reasonable opportunity for further
4 investigation and discovery, it is likely that the evidence will show that the acts of
5 infringement of OpenTable have occurred with knowledge of the '969 Patent and are
6 willful and deliberate. This action, therefore, is "exceptional" within the meaning of 35
7 U.S.C. § 285.

8 18. Mount Hamilton has been damaged by the infringement by OpenTable and
9 is suffering, and will continue to suffer, irreparable harm and damage as a result of this
10 infringement, unless such infringement is enjoined by this Court.

11 19. Mount Hamilton has no adequate remedy at law.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Mount Hamilton prays for the following relief:

14 A. A judgment for Plaintiff on the Complaint, including a finding that
15 OpenTable has infringed, contributorily infringed, and/or induced infringement of the '969
16 Patent;

17 B. A judgment and order preliminarily and permanently enjoining OpenTable,
18 its employees and agents, and any other person(s) in active concert or participation with it
19 from infringing, contributorily infringing, and/or inducing infringement of the '969 Patent;

20 C. An order directing OpenTable to file with the Court, and serve upon Mount
21 Hamilton's counsel, within thirty (30) days after entry of the order of injunction, a report
22 setting forth the manner and form in which it has complied with the injunction;

23 D. A judgment that OpenTable has willfully infringed and is willfully
24 infringing the '969 Patent;

25 E. A judgment and order requiring OpenTable to pay Mount Hamilton
26 damages, including damages under 35 U.S.C. § 284, along with prejudgment interest and
27 supplemental damages for any continuing post-verdict infringement up until entry of the
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1 final judgment with an accounting as needed, but in no event less than a reasonable royalty
2 calculated on a per-reservation basis, including treble damages for willful infringement as
3 provided by 35 U.S.C. § 284;

4 F. A judgment and order declaring this an exceptional case and awarding
5 Mount Hamilton attorneys' fees and expenses, as provided by 35 U.S.C. § 285; and

6 G. A judgment and order awarding Mount Hamilton such other and further
7 relief as this Court may deem just and proper.

8
9 Dated: May 12, 2009

PILLSBURY WINTHROP SHAW PITTMAN LLP

10
11
12 By 

Benjamin T. Duranske
Attorneys for Plaintiff
Mount Hamilton Partners, LLC

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands trial by jury
for all claims triable by jury in this action.

Dated: May 12, 2009

PILLSBURY WINTHROP SHAW PITTMAN LLP

By



Benjamin T. Duranske
Attorneys for Plaintiff
Mount Hamilton Partners, LLC